

1 HONORABLE RONALD B. LEIGHTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

9  
10 FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

11 Plaintiff,

12 v.

13 SUNG SOOK AHN,

14 Defendant

15 and

16 SUNG SOOK AHN, and GREGORY  
17 TIFT,  
18

19 Counter Claimants,

20 v.

21 FEDERAL NATIONAL MORTGAGE  
ASSOCIATION, et al.,  
22

23 Counter  
24 Defendants.

CASE NO. C14-5063 RBL

ORDER GRANTING MOTION TO  
DISMISS

[DKT. #16]

25  
26 THIS MATTER is before the Court on Counter-defendant Northwest Trustee Services'  
27 Motion to Dismiss Counterclaims [Dkt. # 16]. Pro-se Defendant and Counterclaimant Sung Sook  
28

1 Ahn defaulted on her mortgage loan in May of 2012, and the lender foreclosed. Northwest, as  
2 trustee, sold Ahn's residence to Federal National Mortgage Association (FNMA). FNMA then  
3 sued to evict Ahn from the residence. Ahn removed the case and asserted counterclaims against  
4 Northwest, FNMA, Everhome Mortgage (the loan servicer), and Tina McPherson (the point of  
5 contact for Ahn's loan). Ahn argues primarily that Everhome illegally foreclosed on her house  
6 after promising that it wouldn't. Her claims do not state specifically what Northwest's  
7 misconduct was, but generally argue that Northwest wrongfully and improperly sold her house  
8 after the foreclosure.

9  
10 Gregory Tift attempted to assist Ahn with her loan modification. He joined Ahn as a  
11 counterclaimant, arguing that Ahn's foreclosure damaged his reputation.

12 Northwest seeks dismissal under Fed. R. Civ. P. 12(b)(6). It argues that none of Ahn and  
13 Tift's claims assert any facts establishing Northwest's plausible liability, and points out that  
14 some do not mention Northwest at all.

15  
16 **I. BACKGROUND**

17 Ahn secured a mortgage loan from Bank of America for \$235,037. Ahn defaulted on her  
18 loan in May of 2012. In April of 2013 Tift helped her apply for a loan modification. Tift operates  
19 an alternative dispute housing counseling service.

20 On June 28, 2013, Ahn received notice that Bank of America transferred her loan to  
21 Everhome, which continued to process her modification. Everhome assured Ahn that it would  
22 not foreclose while it processed her application for a modification.

23  
24 Meanwhile, in April of 2013, Bank of America appointed Northwest as the successor  
25 trustee of Ahn's home under the Deed of Trust. Northwest delivered a Notice of Default to Ahn  
26 on April 2, 2013. Northwest recorded a Notice of Trustee's Sale on June 5, 2013 setting the sale

1 date as October 11, 2013 and delivered the notice to Ahn on June 6. Ahn made no attempt to  
 2 restrain the sale and FNMA bought the home and recorded the Trustee's Deed on October 18,  
 3 2013.

4 FNMA sued Ahn to remove her from the residence. Ahn and Tift assert counterclaims  
 5 against FNMA, Everhome, McPherson, and Northwest, all arising out of the claim that  
 6 Northwest wrongfully sold her home to FNMA after Everhome and McPherson promised they  
 7 wouldn't foreclose. Ahn and Tift allege violations of the Deed of Trust Act, breach of a third  
 8 party contract, breach of contract, equitable estoppel, violations of the Washington State  
 9 Consumer Protection Act, promissory estoppel, negligent infliction of emotional distress,  
 10 intentional infliction of emotional distress, and false light.<sup>1</sup> Many of the claims do not allege any  
 11 conduct by Northwest and all of the claims lack any possible factual basis. Due to these  
 12 deficiencies, Northwest seeks dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim  
 13 upon which relief can be granted.<sup>2</sup>

## 16 II. DISCUSSION

### 17 A. Fed. R. Civ. P. 12(b)(6) Standard

18 Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal  
 19 theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*  
 20 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's complaint must allege  
 21 facts to state a claim for relief that is plausible on its face. *See Aschcroft v. Iqbal*, 129 S. Ct.  
 22 1937, 1949 (2009). A claim has "facial plausibility" when the party seeking relief "pleads

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24 <sup>1</sup> If and to the extent that Tift joins Ahn in any of the claims other than "false light," his  
 25 counterclaims are DISMISSED. He has no standing to assert them.

26 <sup>2</sup> Northwest also seeks to strike Ahn's opposition to the motion because it was filed late  
 27 [Dkt. 21]. Ahn requested an extension of time to respond, but even that came two days after her  
 28 response was due. However, Ahn's Request For Relief From Deadline [Dkt. 19] is GRANTED  
 and her late response [Dkt. 24] is accepted by the court because Northwest is not prejudiced.

1 factual content that allows the court to draw the reasonable inference that the defendant is liable  
 2 for the misconduct alleged.” *Id.* Although the Court must accept as true the Complaint’s well-  
 3 pled facts, conclusory allegations of law and unwarranted inferences will not defeat a Rule 12(c)  
 4 motion. *Vazquez v. L. A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State*  
 5 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation to provide the ‘grounds’  
 6 of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic  
 7 recitation of the elements of a cause of action will not do. Factual allegations must be enough to  
 8 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
 9 (2007) (citations and footnotes omitted). This requires a plaintiff to plead “more than an  
 10 unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 129 S. Ct. at 1949 (citing  
 11 *Twombly*).  
 12

13 On a 12(b)(6) motion, “a district court should grant leave to amend even if no request to  
 14 amend the pleading was made, unless it determines that the pleading could not possibly be cured  
 15 by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242,  
 16 247 (9th Cir. 1990). However, where the facts are not in dispute, and the sole issue is whether  
 17 there is liability as a matter of substantive law, the court may deny leave to amend. *Albrecht v.*  
 18 *Lund*, 845 F.2d 193, 195–96 (9th Cir. 1988).  
 19

20 **B. Deed of Trust Act Claim**

21 Ahn claims that Northwest violated the Deed of Trust Act by failing to provide statutory  
 22 notice to her regarding alternatives to the foreclosure proceedings. The Deed of Trust Act  
 23 requires a trustee to issue and transmit to the borrower a Notice of Default and a Notice of  
 24 Trustee’s Sale. RCW 61.24.030(8); RCW 61.23.040(1)(b) (respectfully). Both of those notices  
 25 were delivered by Northwest in accordance with the Deed of Trust Act. Ahn’s claim is not  
 26  
 27

1 plausible. Northwest's Motion to Dismiss this claim is GRANTED and it is DISMISSED with  
2 prejudice.

3 **C. Breach of Third Party Contract Claim**

4 Ahn argues that Everhome breached a contract with the United States Treasury when it  
5 allowed Northwest to complete the foreclosure while Everhome was reviewing Ahn's loan  
6 modification application. This claim fails the *Iqbal* standard because Ahn does not allege a  
7 contract to which Northwest was a party or any breach by Northwest. Northwest's Motion to  
8 Dismiss this claim is GRANTED and it is DISMISSED with prejudice.

9  
10 **D. Breach of Contract Claim**

11 Ahn argues that Everhome guaranteed it would not foreclose on her home while it was  
12 reviewing her loan modification application. This claim fails the *Iqbal* standard because it does  
13 not allege a contract to which Northwest was a party or any breach by Northwest. Northwest's  
14 Motion to Dismiss this claim is GRANTED and it is DISMISSED with prejudice.

15  
16 **E. Equitable Estoppel Claim**

17 Ahn argues that Everhome implicitly and explicitly represented to Ahn that it would not  
18 foreclose on her property while it was reviewing her loan modification application. Because of  
19 these representations Ahn argues that Everhome should be estopped from foreclosing on her  
20 home. Ahn's equitable estoppel claim does not allege any actions by Northwest.

21 Furthermore, after foreclosure, a borrower waives the right to bring suit for anything  
22 other than damages. RCW 61.24.127. Ahn's claim for equitable estoppel, therefore, states a  
23 claim upon which relief cannot possibly be granted. Northwest's Motion to Dismiss this claim is  
24 GRANTED and it is DISMISSED with prejudice.

1           **F. Washington State Consumer Protection Act Claim**

2           Ahn argues that Northwest violated multiple sections of the Washington State Consumer  
3 Protection Act. Her claims against Northwest are merely bare-bones recitations of the elements  
4 at best without accompanying factual allegations of any kind. For example, “Counterclaimants  
5 allege, have knowledge, and are reasonably informed that all Codefendants have breached the  
6 Washington State Consumer Protection Act RCW 19.86.090 Civil Action Damages-treble  
7 damages” [Dkt. 2, 59]. These sorts of allegations fail the *Iqbal* standard. Northwest’s Motion to  
8 Dismiss this claim is GRANTED and it is DISMISSED with prejudice.

9           **G. Promissory Estoppel Claim**

10           Ahn argues that she, relying on Everhome’s promise to modify her loan, did not seek  
11 alternatives to foreclosure. Ahn makes no allegations of any communication from Northwest  
12 regarding loan modification. Her promissory estoppel claim does not apply to Northwest.

13           Furthermore, after foreclosure, a borrower waives the right to bring suit for anything  
14 other than damages. RCW 61.24.127. Ahn’s claim for promissory estoppel, therefore, states a  
15 claim upon which relief cannot possibly be granted. Northwest’s Motion to Dismiss this claim is  
16 GRANTED and it is DISMISSED with prejudice.

17           **H. Negligent Infliction of Emotional Distress Claim**

18           Ahn’s claim for negligent infliction of emotional distress is nothing more than a  
19 statement without any factual support or specific assertions against Northwest:  
20 “Counterclaimants have been damaged by codefendants negligent infliction of emotional distress  
21 and are entitled to an award of damages” [Dkt. 2, 63]. These sorts of allegations fail the *Iqbal*  
22 standard. Northwest’s Motion to Dismiss this claim is GRANTED and it is DISMISSED with  
23 prejudice.

1           **I.       Intentional Infliction of Emotion Distress Claim**

2           Ahn's claim for intentional infliction of emotional distress is merely a bare-bones  
3 recitation of the elements, without accompanying factual allegations of any kind. For example,  
4 "Codefendants' conduct was outrageous" [Dkt. 2, 64]. These sorts of allegations fail the *Iqbal*  
5 standard. Northwest's Motion to Dismiss this claim is GRANTED and it is DISMISSED with  
6 prejudice.  
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8           **J.       False Light Claim**

9           Tift argues that Everhome's negligent handling of documents transmitted by Tift between  
10 Everhome and Ahn damaged Tift's reputation. This claim is contradicted by the rest of the  
11 complaint: every other claim asserts that Ahn holds Everhome, and not Tift, accountable for the  
12 alleged harm to her.  
13

14           Furthermore, Tift's claim does not contain any accompanying factual allegations of any  
15 kind, but merely asserts that Everhome "and all codefendants" were negligent. These sorts of  
16 allegations fail the *Iqbal* standard. Northwest's Motion to Dismiss this claim is GRANTED and  
17 it is DISMISSED with prejudice.  
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19           **K.       Amendment**

20           Northwest's Motion to Dismiss Ahn and Tift's Counterclaims [Dkt. 16] is GRANTED.  
21 Furthermore, because Northwest followed the proper procedures during the sale of Ahn's  
22 residence, there is no possibility that the flaws in Plaintiffs' complaint could be cured by  
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1 amendment, and leave to amend is denied. All counterclaims against Northwest are DISMISSED  
2 with PREJUDICE. Northwest is terminated as a party to these proceedings.

3 IT IS SO ORDERED.

4 Dated this 1<sup>st</sup> day of August, 2014.

5   
6 Ronald B. Leighton

7 RONALD B. LEIGHTON  
8 UNITED STATES DISTRICT JUDGE